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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

22 Cr. 673 (LAK)

5 SAMUEL BANKMAN-FRIED,

6 Defendant.

7 -----x Arraignment

8 New York, N.Y.
9 January 3, 2023
2:00 p.m.

10 Before:

11 HON. LEWIS A. KAPLAN,

12 District Judge

13
14 APPEARANCES

15 DAMIAN WILLIAMS

United States Attorney for the
Southern District of New York

16 DANIELLE R. SASSOON

17 NICOLAS ROOS

ANDREW ROHRBACH

18 SAMUEL RAYMOND

Assistant United States Attorneys

19 COHEN & GRESSER, LLP

Attorneys for Defendant

20 MARK S. COHEN

21 CHRISTIAN R. EVERDELL

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1 THE DEPUTY CLERK: United States v. Samuel
2 Bankman-Fried.

3 Government, are you ready?

4 Can you please put your appearances on the record.

5 MS. SASSOON: Yes. Good afternoon, your Honor.
6 Danielle Sassoon, Nick Roos, Sam Raymond, and Andrew Rohrbach
7 for the United States.

8 THE COURT: Good afternoon.

9 MR. COHEN: Good afternoon, your Honor. Mark Cohen,
10 Cohen & Gresser, for the defendant Samuel Bankman-Fried.

11 MR. EVERDELL: Christian Everdell for
12 Mr. Bankman-Fried.

13 THE COURT: Good afternoon.

14 THE DEPUTY CLERK: Mr. Cohen, have you received a copy
15 of the indictment?

16 MR. COHEN: Yes.

17 THE DEPUTY CLERK: Have you reviewed it with your
18 client?

19 MR. COHEN: Yes.

20 THE DEPUTY CLERK: Does he waive the public reading?

21 MR. COHEN: Yes, we do.

22 THE DEPUTY CLERK: How does he plead?

23 MR. COHEN: He pleads not guilty to all counts.

24 THE DEPUTY CLERK: Thank you, sir.

25 THE COURT: Thank you.

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1 Now, I received early this morning a motion from
2 defendant's counsel to redact on the bonds that are to be
3 signed by two remaining bail sureties the names and what's
4 described as other identifying information.

5 Mr. Cohen, first of all, what do you have in mind when
6 you say "other identifying information"?

7 MR. COHEN: I think just the address, your Honor.
8 Just the name and address.

9 THE COURT: Okay. Thank you.

10 Now, what I think I will do with this, which I gather
11 the government is taking no position on. Is that right?

12 MS. SASSOON: That's correct, your Honor.

13 THE COURT: Is the following: I understand the
14 argument put forth by the defense. And put to one side for the
15 moment the question of standing. But I'm going to grant the
16 application, but I do so without prejudice to any application
17 to release the names and addresses. Unless otherwise ordered,
18 any such application shall be made by motion filed no later
19 than January 12.

20 I do this because I understand that there has not been
21 any adversarial determination of whether this application
22 should be granted, and I anticipate the possibility that
23 members of the media or others may wish to contest the sealing
24 of that information, and they're entitled to have that
25 opportunity.

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1 Any objection to my doing that, Ms. Sassoon?

2 MS. SASSOON: No, your Honor.

3 THE COURT: Mr. Cohen?

4 MR. COHEN: No, your Honor.

5 THE COURT: That takes care of that.

6 So Ms. Sassoon, I've read the indictment. What does
7 the government have to say beyond it about the nature of the
8 case, the discovery, the schedule, the usual?

9 MS. SASSOON: Yes, your Honor. As you know, the
10 defendant is charged in an eight-count indictment that arises
11 from a wide-ranging fraud on customers of the defendant's
12 cryptocurrency exchange FTX, investors in that exchange, and on
13 lenders to his cryptocurrency hedge fund Alameda Research.

14 Would your Honor like a factual overview of the case?

15 THE COURT: Whatever you'd like to do.

16 MS. SASSOON: Yes, your Honor.

17 The government expects that the evidence in this case
18 will show that the defendant operated this FTX cryptocurrency
19 exchange, and that from the outset, it had a unique and
20 concealed relationship with his cryptocurrency hedge fund
21 Alameda Research.

22 From the outset, customer deposits were deposited into
23 bank accounts controlled by Alameda, and from the early days of
24 the exchange, Alameda was using that customer money for Alameda
25 operational expenses.

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1 Over the lifetime of the exchange, the defendant
2 directed that Alameda receive certain preferential treatment on
3 the exchange that was built into the exchange's code and
4 software. Some of those preferences included an allow negative
5 flag that allowed Alameda to accrue a negative balance on the
6 exchange. There was also code that permitted Alameda to
7 essentially have an unbounded line of credit on the exchange,
8 even without sufficient collateral for that borrowing.

9 This culminated in June of 2022 with Alameda borrowing
10 billions of dollars off of FTX, which necessarily included FTX
11 customer money. This was used in part to repay billions of
12 dollars in loans taken out by Alameda that were being recalled
13 by the lenders, and which Alameda otherwise had no ability to
14 repay.

15 Customer funds were also used and laundered through
16 political donations, charitable donations, and a variety of
17 venture investments by the defendant and his associates.

18 The evidence we expect will also show that even after
19 Alameda borrowed billions of dollars to repay loans, the
20 defendant directed continued borrowing for other additional
21 investments in the hundreds of millions of dollars.

22 This all occurred with the defendant's knowledge and
23 at his direction. And after this borrowing took place, when
24 the defendant was aware that Alameda had no ability to repay
25 this borrowing, the defendant attempted to solve the problem by

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1 raising billions of dollars from equity investors.

2 In November, when there was a surge in customer
3 withdrawals from FTX in response to the leaking of Alameda's
4 balance sheet and tweets from the CEO of Binance, the defendant
5 tried to staunch the withdrawals by raising additional
6 investments, and also by lulling FTX's customers with false
7 information, including tweets that FTX's assets were fine, and
8 other messages along those lines that he knew were false, as he
9 was aware that there was a hole in FTX's balance sheet in the
10 billions of dollars as a consequence of Alameda's borrowing and
11 the misappropriation of customer money.

12 That's a brief overview of the case, your Honor.

13 With respect to discovery, we anticipate submitting a
14 protective order to the Court to govern the production of
15 discovery within the next few days. We also anticipate making
16 a first production to the defense this week that will consist
17 of search warrants and other legal process. Within the next
18 two weeks we anticipate making a large production of hundreds
19 of thousands of documents that includes materials from the FTX
20 debtors, from investors in FTX, from political campaigns, from
21 banks, from internet service providers, and from individual
22 employees of Alameda and FTX.

23 THE COURT: This is material coming other than from
24 the companies with which the defendant was affiliated; is that
25 right?

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1 MS. SASSOON: So FTX is now in bankruptcy, and they've
2 made numerous productions to us of company e-mails and
3 documents.

4 THE COURT: So that will be included in this second
5 wave. Is that right?

6 MS. SASSOON: In this first large production, after we
7 produce the search warrants and other legal process.

8 We do anticipate, however, that discovery will
9 continue on a rolling basis. Given the speed at which this
10 case was charged, we have a number of pending subpoenas and
11 voluntary document requests. We continue to investigate and to
12 execute additional legal process. And so, as we receive
13 discovery, we will work quickly to produce it to the defendant.

14 We also have executed searches on a number of accounts
15 and devices which are still being extracted, reviewed for
16 privilege and responsiveness, and we're working quickly to get
17 those reviews completed, but those are not yet complete.

18 Finally I wanted to flag that one more complicated
19 piece of the discovery is going to be the AWS database of FTX.
20 Basically, FTX had --

21 THE COURT: AWS?

22 MS. SASSOON: So that stands for Amazon Web Services.
23 And FTX hosted a database on AWS that included transaction
24 history for customers of the exchange. We do not have custody
25 of the entire database, but we've received access to it from

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1 the FTX debtors, and we will work with defense counsel to
2 figure out a way to get them the necessary access so that we
3 can comply with our discovery obligations.

4 THE COURT: Outside date?

5 MS. SASSOON: I think the bulk of discovery will be
6 produced within the next few weeks, but with respect to
7 incoming productions, that's going to be ongoing and it's
8 difficult to say when we'll receive the last drips and drabs.
9 But, as I said, as we receive things, we'll produce them
10 promptly.

11 THE COURT: Well, you've said the bulk in the next few
12 weeks. Given what you have in hand now, when do you finish?

13 MS. SASSOON: In terms of what we have now, I would
14 say the bulk within two weeks, and all of it within four.

15 THE COURT: What is the government's views on a
16 motions schedule?

17 MS. SASSOON: We touched on that with defense counsel.
18 I think the parties would like to propose a trial date and then
19 back into a motion schedule in light of the trial date, if that
20 works for your Honor. But we're happy to take it --

21 THE COURT: You can propose.

22 MS. SASSOON: I don't want to speak for defense
23 counsel, but we had discussed a potential trial date in
24 September or October of this year, your Honor.

25 MR. COHEN: Your Honor, if I might. We of course

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1 defer to the Court's schedule. But if the Court has time for
2 us in September, October, we would like to have a trial date
3 then.

4 If I'm hearing, and I wasn't exactly sure, if I'm
5 hearing that discovery will be completed in four weeks, then we
6 would defer to the Court about setting a schedule that sort of
7 gears back to September, if that's a period the Court can --

8 THE COURT: I didn't hear completion in four weeks. I
9 heard completion of what they have in hand now.

10 MR. COHEN: Yes.

11 THE COURT: With other things to follow.

12 MR. COHEN: The key to us is what does the other
13 things to follow mean.

14 THE COURT: Yes. And I understood it to be materials
15 received pursuant to outstanding legal process and future legal
16 process, devices and accounts that need to be rendered
17 intelligible, and access to the complete AWS databases of FTX.
18 Those three categories.

19 Did I get that right, Ms. Sassoon?

20 MS. SASSOON: Yes, your Honor. With respect to
21 warrants that might form the basis for motions, we're going to
22 get that out this week.

23 THE COURT: All right.

24 How long a trial do you anticipate, Ms. Sassoon? I'll
25 hear from you first.

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1 MS. SASSOON: Approximately four weeks, your Honor.

2 THE COURT: Okay. Mr. Cohen?

3 MR. COHEN: Very hard to say today, your Honor. We
4 haven't gotten any of the discovery. But I would put down two
5 weeks, two to three weeks, potentially.

6 THE COURT: Let me take a look here.

7 October 2, 2023, for trial. I may move that a day or
8 so later or a few days earlier, but that's what I'm shooting
9 for. Unless you hear otherwise, that's when we're going to try
10 it.

11 So, now let's talk about this motion schedule. Don't
12 all speak at once.

13 MS. SASSOON: Your Honor, we're happy to let the
14 defense propose a date for the filing of their motions.

15 THE COURT: Okay. Mr. Cohen?

16 MR. COHEN: Your Honor, it really depends on when we
17 get all the discovery. But, assuming we do, say by the end of
18 February, we were going to suggest perhaps the end of April for
19 defense motions, if that works for the Court.

20 THE COURT: Let's say April 3. Any objection?

21 MS. SASSOON: No, your Honor.

22 THE COURT: How much time do you need, Ms. Sassoon?

23 MS. SASSOON: Without knowing the scale of the
24 motions, we'd ask for three weeks.

25 THE COURT: You can make a fair assumption.

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1 MS. SASSOON: Three weeks, your Honor.

2 THE COURT: Okay. April 24.

3 A week for reply, counselor?

4 MR. COHEN: Would it be possible to have two weeks,
5 your Honor?

6 THE COURT: May 8.

7 We'll set it for argument or conference on May 18 at
8 10 a.m.

9 Is there any time gone on the clock?

10 MS. SASSOON: Time is excluded through today, so we'd
11 move to exclude time between now and the trial date of
12 October 2, 2023, so that the government can produce discovery,
13 the defense can review it, prepare motions, so the parties can
14 litigate the motions, and the parties can prepare for trial.

15 THE COURT: Any objection, Mr. Cohen?

16 MR. COHEN: No, your Honor.

17 THE COURT: Time is excluded from now to and including
18 October 2, 2023. I find that the interests of justice served
19 thereby outweigh the interests of the public and the defendant
20 in a speedy trial for the reasons articulated by Ms. Sassoon,
21 and also the extensive character of the discovery and the
22 defense's need for a significant period of time to review it
23 and make any necessary motions.

24 Is there anything else we can usefully accomplish
25 today?

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1 MS. SASSOON: Couple things, your Honor. The first is
2 with respect to victim notification. FTX was the second
3 largest cryptocurrency exchange, and the number of victims is
4 potentially above 1 million. At least as estimated in a filing
5 by the FTX debtors, they said there could be as many as over 1
6 million victims. So we intend to file a motion with the Court
7 in the next couple days asking to provide notice to victims
8 through a website rather than individually.

9 THE COURT: Okay.

10 MS. SASSOON: And then with respect to the defendant's
11 bail conditions. The parties proposed an agreed-upon package
12 to Judge Gorenstein, which was entered at the presentment. But
13 we would like to propose an additional bail condition that we
14 think would have been supported at the time of the presentment,
15 but in light of some recent events, we believe it's necessary
16 to add this condition.

17 Specifically, we'd like to add a condition that the
18 defendant be prohibited from accessing or transferring any FTX
19 or Alameda assets, including cryptocurrency, and including
20 assets or cryptocurrency purchased with FTX or Alameda funds.

21 THE COURT: Mr. Cohen?

22 MR. COHEN: Yes, your Honor. We've been discussing
23 this with the government. We spoke with them about it
24 yesterday.

25 Just as context for the Court, on Friday, there was I

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1 guess a tweet alleging that Mr. Bankman-Fried had in fact
2 transferred assets when he had not. We called the government
3 right away, we notified them about this, we offered to help
4 Friday and through the weekend. And I think there was a
5 concern on the government's part that the standard conditions
6 and the strict conditions already in place be supplemented,
7 although I think this is probably just duplicative of those
8 conditions.

9 So we have spoken to them about potential language to
10 address this. We have not, in fairness to the government, had
11 a chance to fully vet it with them. We've exchanged drafts.
12 We think we can come to terms with them.

13 We would suggest that the Court give us a day or two
14 to see if we can, and we can make a joint submission, if the
15 Court would allow us to.

16 THE COURT: Ms. Sassoon, what do you say?

17 MS. SASSOON: A few things, your Honor.

18 First, we appreciate the defense is working with us
19 toward agreed-upon language. That said, it was reported on
20 December 28, 2022, that some Alameda wallets had been accessed
21 and money was transferred. We don't have evidence at this time
22 that it was the defendant. We are investigating it. But this
23 money is now inaccessible for purposes of government seizure
24 for forfeiture. And we do have concerns that even within a
25 period of a few days, that additional assets could be accessed

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1 and become inaccessible.

2 Assuming that it was not the defendant, it's hard to
3 understand why they would have an issue with entering such a
4 condition with the possibility of modifying the language if we
5 have further discussion.

6 But, in terms of the defendant's tweet that it was not
7 him and the representation it was not him, we don't put full
8 stock in that simply because our investigation has revealed
9 that he has tweeted knowing false statements before, including
10 as I described earlier.

11 In addition, while we don't know whether it was the
12 defendant who made these transfers, he did at one point have
13 access to these wallets, and we also have evidence that after
14 FTX entered bankruptcy and declared bankruptcy and he stepped
15 down as CEO, he worked with foreign regulators to transfer
16 assets to those foreign regulators when he knew that the U.S.
17 bankruptcy was also interested in those assets. And he did it
18 expressing to a co-conspirator that he knew there was
19 competition between the U.S. bankruptcy and the foreign
20 regulators, but that he wanted to stall with the U.S.
21 bankruptcy, get the assets to the foreign regulators, in part
22 because he thought they would essentially be more lenient with
23 him, and he might have a possibility of regaining control of
24 his business. That's in sum and substance what he said.

25 So, for these reasons we do think such a condition is

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1 justified, and that no harm would come of entering a condition
2 now with the possibility of proposing a modification to the
3 Court within a few days, if there are concerns about the
4 language.

5 THE COURT: And the operative language, which I
6 acknowledge you're speaking of is interim language in the
7 absence of a subsequent agreement, is accessing or transferring
8 exactly what?

9 MS. SASSOON: That the defendant be prohibited from
10 accessing or transferring any FTX or Alameda assets or
11 cryptocurrency, including assets or cryptocurrency purchased
12 with funds from FTX or Alameda. With FTX defined to include
13 FTX.com, FTX U.S., FTX Digital Markets Ltd., and all affiliated
14 subsidiary and successor entities. And Alameda defined to
15 include Alameda Research and any affiliated subsidiary and
16 successor entities.

17 THE COURT: All right. Unless otherwise ordered by
18 the Court, the requested condition as just stated by
19 Ms. Sassoon is made a condition of the defendant's bail as of
20 this moment.

21 I hope you can work out language that's mutually
22 acceptable. But it seems to me that that condition is
23 warranted in all the circumstances.

24 MR. COHEN: If I might be heard. I understand the
25 Court's ruling. I just would like to respond to a few things

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1 the government attorney said, because they could be relevant if
2 we're back before your Honor on this issue, which I hope we're
3 not.

4 THE COURT: Why don't we save it for when you're back
5 before the Court, if that should happen, which I hope isn't
6 necessary.

7 MR. COHEN: But, just for your Honor's benefit,
8 Mr. Bankman-Fried did not make these transfers. We reached out
9 to the government telling them that. And the proceedings she
10 referred to, Ms. Sassoon referred to before the Bahamians, he
11 was actually ordered by a court in the Bahamas to make those
12 transfers.

13 THE COURT: None of that is material to the ruling
14 which I have made already. I understand you and Ms. Sassoon
15 may have different views about what did or didn't happen. But
16 in all the circumstances, I can see no legitimate objection to
17 the condition that I have just imposed. And unless you can
18 work out something that's mutually acceptable in its place,
19 that's the condition that will stand.

20 MR. COHEN: Your Honor, and what would be the Court's
21 preferred way to come back to you if we have to?

22 THE COURT: Letter.

23 MR. COHEN: Okay.

24 THE COURT: Just docket it on ECF.

25 MR. COHEN: Okay.

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1 THE COURT: Okay. I have one or two remaining
2 questions.

3 What's the status of any agreement or lack of
4 agreement with respect to the amounts of the bonds to be signed
5 by the two additional financially responsible persons?

6 MS. SASSOON: Your Honor, there is no agreement yet
7 because we have scheduled interviews with those cosigners, and
8 the amount will be dependent on what we learn about their
9 financial circumstances in those interviews. But I imagine
10 we'll come to a consensus about that.

11 THE COURT: When?

12 MS. SASSOON: Likely in the next day or two.

13 THE COURT: Okay. All right. Thank you.

14 Which of the two insolvency proceedings was filed
15 first, Delaware or the Bahamas?

16 MR. COHEN: The Bahamas, your Honor.

17 THE COURT: Does that make any difference?

18 MR. COHEN: That was the point I was trying to make
19 before, your Honor.

20 THE COURT: Well, sure.

21 MS. SASSOON: Your Honor, I'm no bankruptcy expert and
22 I'm not sure in what respect you're asking if it makes a
23 difference. But, my understanding is that the Bahamian
24 proceeding was filed in contemplation of a U.S. bankruptcy
25 proceeding.

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1 THE COURT: Okay. Anything else?

2 MS. SASSOON: Nothing from the government, your Honor.

3 THE COURT: Okay.

4 MS. SASSOON: Thank you.

5 THE COURT: Thank you.

6 (Adjourned)

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